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16 APPLE INC.

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 WI-LAN, INC.,  
20 Plaintiff,  
21 v.  
22 APPLE INC.,  
23 Defendant.

CASE NO. 3:14-cv-1507-DMS-BLM  
(consolidated);

CASE NO. 3:14-cv-02235-DMS-BLM  
(lead case)

**APPLE INC.'S OBJECTIONS TO  
PROFESSOR PRINCE'S OPINIONS**

Dept.: 13A  
Judge: Hon. Dana M. Sabraw  
Magistrate Judge: Hon. Barbara L. Major

26 AND RELATED  
27 COUNTERCLAIMS

1 In order to avoid disrupting the presentation of evidence at trial with multiple  
 2 preservation objections, Apple Inc. (“Apple”) respectfully submits for the record  
 3 the following written objections to the expected testimony by Professor Prince.  
 4 Professor Prince’s survey results and related calculations, which provide at least  
 5 part of the basis for Mr. Kennedy’s damages opinion, fail to apportion the relative  
 6 value between the patented and unpatented features, which is required by law. For  
 7 the reasons stated in Apple’s *Daubert* motion briefing and trial brief, Mr.  
 8 Kennedy’s opinions relying on Professor Prince’s survey results are inadmissible,  
 9 which render Professor Prince’s opinions irrelevant and unnecessary. Therefore,  
 10 this testimony should not be admitted for the reasons stated in Apple’s *Daubert*  
 11 motion briefing and trial brief, and as irrelevant and more prejudicial than probative  
 12 under Federal Rules of Evidence 401, 402 and 403. Dkt. Nos. 333, 373, 433.

13 The relevance of Professor Prince’s opinions and calculations is linked to the  
 14 admissibility of Mr. Kennedy’s damages opinions based on Professor Prince. For  
 15 example, Mr. Kennedy relies on Professor Prince’s opinions that (1) consumers  
 16 would pay between \$74 to \$136 per unit for just one of the three alleged “benefits”  
 17 of the claimed inventions, and (2) Apple would lose between \$70 to \$120 of profit  
 18 per device without that alleged benefit. As stated in Apple’s *Daubert* motion, Mr.  
 19 Kennedy relies on Professor Prince’s “willingness-to-pay” and “profit impact”  
 20 calculations as a proxy for apportionment, but they are not apportionment and are  
 21 not intended to apportion the value of the claimed inventions relative to unpatented  
 22 technology. Dkt. No. 333 at 16-23. Mr. Kennedy’s opinions based on Professor  
 23 Prince’s calculations are therefore inadmissible because patentee “must in every  
 24 case give evidence tending to separate or apportion the defendant’s profits and the  
 25 patentee’s damages between the patented feature and the unpatented features.”  
 26 *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1318 (Fed. Cir. 2011) (quoting  
 27 *Garretson v. Clark*, 111 U.S. 120, 121 (1884)); *Finjan, Inc. v. Blue Coat Sys., Inc.*,  
 28 879 F.3d 1299, 1311 (Fed. Cir. 2018) (“Further apportionment was required to

1 reflect the value of the patented technology compared to the value of the unpatented  
 2 elements.”); *LaserDynamics, Inc. v. Quanta Comput., Inc.*, 694 F.3d 51, 70 (Fed.  
 3 Cir. 2012) (requiring experts to undertake “task of discerning the ODD’s value  
 4 relative to all other components in the laptop”). Professor Prince’s opinions and  
 5 calculations have no relevance to this case once Mr. Kennedy’s opinions are  
 6 properly excluded as not meeting the Federal Circuit’s apportionment requirements.

7 Therefore, for the reasons stated above and as set forth in Apple’s *Daubert*  
 8 briefing (Dkt. Nos. 333, 373) and in Apple’s trial brief (Dkt. No 433), Apple  
 9 respectfully requests that the Court sustain Apple’s objection to Professor Prince’s  
 10 testimony as irrelevant and more prejudicial than probative under Federal Rules of  
 11 Evidence 401, 402 and 403 because they are only arguably relevant to the damages  
 12 opinion that the Court should separately excluded as contrary to the Federal  
 13 Circuit’s requirements.

14  
 15 Dated: July 25, 2018

DLA PIPER LLP (US)

17 By /s/ Sean C. Cunningham

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

/s/ Sean C. Cunningham  
Sean C. Cunningham